REMARKS

The Office has required restriction in the present application as follows:

Group I: Claim 1, drawn to a pharmaceutical composition with photoactivable rhodamine derivatives;

Group II: Claims 2 and 9, drawn to an unspecified method of use;

Group III: Claims 3 and 10 drawn to a method for preventing graft-versus-host-disease (GVHD) in a patient by transplanting allogeneic stem cells treated with photoactivable rhodamine derivatives;

Group IV: Claims 4-6, 11, 12, 15, and 16, drawn to a method for treating immunologic disorder in a patient by transplanting hematopoietic cells treated with photoactivable rhodamine derivatives;

Group V: Claims 7 and 8, drawn to a method for evaluating transport mechanism of immune and malignant cells by flow cytometry; and

Group VI: Claims 13 and 14, drawn to a method of manufacturing medicament with photoactivable rhodamine derivatives.

Applicants elect, with traverse, Group I, Claim 1 for further prosecution.

The Examiner, citing PCT Rules 13.1 and 13.2, contends that Groups I (a composition claim) and II-VI (method claims) do not relate to a single general inventive concept because the "methods of administration and/or methods for preventing or treating disorders are different methods as claimed and they encompass applications of different cells." Additionally, the Examiner stated that

> pharmaceutical products with photoactive agents including rhodamine derivates are known in the prior art, for example: US 4,684,521. Thus, the unity of inventions is broken.

Applicants object to this reasoning on four different levels, and kindly request that the Examiner withdraw this Restriction Requirement and examine all of the claims on the merits.

Firstly, Applicants traverse the Office's Restriction Requirement, and note that there is no evidence of record that proves that Groups I-VI are "independent and distinct." In fact, the evidence of record proves otherwise. For example, it is noted that Claims 2-16 (i.e., the

constituents of Groups II-VI) are all dependent upon Claim 1. How can the Office state that Groups I and II-VI are "independent and distinct" when, in fact, Groups II-VI are dependent upon Group I? It cannot. Therefore, it is noted that this Restriction Requirement is improper.

Secondly, Applicants traverse the Office's implication that the composition claimed in Claim 1 is neither novel nor unobvious in view of US 4,684,521. Applicants respectfully note that while the Office has issued an Office Action that requires restriction, in fact, the claims have not been examined on the merits. Applicants' reason for illuminating this point is that in the event that elected Claim 1 is found to be allowable, Claims 2-16 are allowable too and should be rejoined with allowed Claim 1.

Thirdly, Applicants respectfully traverse the Restriction Requirement on the ground that unity of invention does exist between Groups I-VI because there is a technical relationship that involves the same special technical feature. It is noted that MPEP §1893.03(d) states:

> When making a lack of unity of invention requirement, the Examiner must (1) list different groups of claims and (2) explain why each group lacks unity with each other group (i.e., why there is no single general inventive concept) specifically describing the unique special technical feature in each group.

Moreover, the Office must ascertain whether the group of inventions "involves at least one common or corresponding special technical feature."

In this case, the Examiner has provided microscopic reasoning why Groups I-VI lack of unity, but has not taken into account that there is a macroscopic reason why they should be examined together. In particular, it is noted that the claimed methods all share "one common special technical feature" with Group I (i.e., they all use the composition claimed in Claim 1). Accordingly, Applicants respectfully submit that the present Restriction Requirement is improper, and that the Restriction Requirement be withdrawn.

Fourthly, Applicants traverse that Restriction Requirement on the additional ground that the Office has not applied the same standard of unity of invention as the International Preliminary Examination Authority. The Authority did not take the position that unity of invention was lacking in the International application and examined all claims together (see attachment). Applicants note that PCT Article 27(l) states that no national law shall require compliance with requirements relating to the form and contents of the International application different from or additional to those which are provided for in the Patent Cooperation Treaty and the Regulations.

Finally, it is noted that MPEP § 803 states that:

> If the search and examination of an entire application can be made without a serious burden, the Examiner must examine it on the merits, even though it includes claims to distinct or independent inventions.

Applicants respectfully submit that a search of all the claims would not impose a serious burden on the Office. In fact, the International Searching Authority has searched all of the claims together.

Applicants have cited references on two separate instances in **Information Disclosure Statements** filed on March 20, 2002, and that which is filed concurrently herewith. The Examiner is respectfully requested to initial the two PTO-1449 forms and include copies of the same with the next Office communication.

Applicants respectfully submit that the above-identified application is now in condition for examination on the merits, and early notice of such action is earnestly solicited.

Respectfully submitted,

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